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Attorney, Scandalous Brief

According to a recent decision of the Court of Appeals of Kansas, no remarks of counsel derogatory to the dignity of the trial judge should be tolerated by an appellate court; and if an attorney indulges in this line of argument, he is liable to have his brief stricken from the files, or to be disbarred from practicing in that court: *State* v. *Gallup*, 42 Pac. Rep. 406. The brief in this case spoke of the trial judge as working himself into a frenzy, and of his being undignified and partisan; and it was ordered to be stricken from the files.

To substantially the same effect are *In re Philbrook*, 105 Cal. 471; S. C., 38 Pac. Rep. 884; *Peo.* v. *Green*, 9 Colo. 506. The rule extends to any brief or pleading containing scandalous matter, by which is understood the "allegation of anything which is unbecoming the dignity of the court to hear, contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause; to which may be added, that any unnecessary allegations bearing cruelly upon the moral character of an individual, is also scandalous:" *Rap & L. Law Dict.* 1151; *Thomas* v. *Berry*, 17 Colo. 322.

Auction Sale, Advertisement

When real estate is exposed to sale at public auction under a written advertisement, the intention of the seller as to the thing he intends to sell, and of the buyer as to what he intends to buy, is to be ascertained by the advertisement, and not by conversations or letters which passed between the parties in prior negotiations for a private sale, which had failed and been abandoned. The advertisement binds both parties: *Maginnis* v. *Union Oil Co.*, (Supreme Court of Louisiana,) 18 So. Rep. 459.

Bailment for Hire, Dressmakers

Since the legal profession has in many states been opened to the ladies, it is only fair that they should be considered in selecting matters of interest, and, fortunately, the Supreme Judicial Court of Massachusetts, with most portentous gravity, has just delivered, *sicut mons*, a weighty opinion upon a matter that is perhaps dearer to the female heart than any other. In *Lincoln* v. *Gay*, 42 N. E. Rep. 95, that court held, that a dressmaker who receives goods to be made into a dress is a bailee for hire, and must exercise reasonable care and skill in determining whether the cloth should be made up wrong side out; and that the mere knowledge of one who has delivered goods to a dressmaker to be made into a dress, that it is being made up wrong side out, will not estop her to sue for damages to the goods, in the absence of evidence that the dressmaker was induced by her conduct to make it up wrong side out when it would not otherwise have been so made, and that she knew or reasonably could have known that the dressmaker would act on such conduct. It is to be regretted that the court did not have occasion to pass upon the question whether or not the customer could recover damages for the vexation of spirit and mental anguish caused by not being able to appear in her new dress on schedule time, and also whether her husband could recover for his loss of sleep and mental suffering caused by his being compelled to listen to the lamentations of his spouse.

The Court of Appeal of England, in *Linfoot* v. *Pockett*,

[1895] 2 Ch. 835, has lately rendered a decision that calls strongly for legislative remedy. The plaintiff, desiring a loan, had applied to the defendant, one of the numerous gentlemen who make loans on furniture, etc., as a special convenience to the borrower, and obtained from him a loan of £100, in consideration of which he assigned to the defendant certain chattels, and agreed to pay for the same "the principal sum, together with the interest then due, as follows: the sum of £6 on December 5, 1894, on account of interest and principal, and a like sum of £6 on account as aforesaid on the 5th day of each and every succeeding month thereafter." This document was signed by him without reading it. On December 5th the plaintiff paid the first instalment, and the defendant sent him a receipt in a book, on the cover of which were printed certain "Rules and regulations which are strictly adhered to." These rules and regulations contained various provisions very burdensome to the plaintiff, which had not previously been mentioned to him. He did not assent so as to bind himself to them; but the defendant afterward wrote to him treating the rules and regulations as part of the bargain. The plaintiff brought suit to have the written agreement cancelled, on the ground of fraud in procuring it, and also on the ground that it was subject to a condition or defeasance not expressed in it. But the court held that he could not have any redress on either of these grounds; for, in the first place, he was not cheated into signing the bill of sale, but chose deliberately to sign it; and in the second place, as the bargain was complete at the time when the bill of sale was executed, and the rules and regulations formed no part of it, the false statement of the defendant that they were part of the bargain did not enable the court to hold as against him that they were part of it, and so to hold the bill of sale void as being made subject to a condition or defeasance not expressed in it.

Bill of Sale, Usurious Loans, Validity

The court regretted its inability to come to a different conclusion, and very strongly expressed their sympathy with the plaintiff; but felt themselves unable in the present state of the

law to relieve him from the consequences of his own folly. There can be no question that all legislatures should provide by law against contingencies such as this; for sharks of this kind are not only already too numerous, but are rapidly increasing in numbers.

Carriers, Sleeping-car Companies, Liability for Loss of Passenger's Effects

The Supreme Court of Georgia has lately decided a case of great importance as involving the question of the liability of a sleeping-car company for the loss of a passenger's property. The plaintiff, who had taken a berth in a sleeping-car, after being assured that the car would go through to his destination, was suddenly roused by the porter and told that he would have to get up quick, or he would be left. He rose hurriedly, gathered up his clothes, and went to the next car. Afterwards, on looking over his clothes, he discovered that his money and some papers were gone. Neither were ever restored to him. Afterwards, on the reverse side of his berth ticket was the following: "Baggage, wearing apparel, money, jewelry, and other valuables taken into the car will be entirely at owner's risk, and employes of this company are forbidden to take charge of the same." Under these facts the court held:

(1) That a sleeping-car company is under the duty of maintaining such watch and guard while the passenger is sleeping as is reasonably necessary to secure the safety of such valuables or baggage as he may properly carry on his person or have in his possession while traveling in the car; and if such property is taken from his possession while he is asleep, the burden rests upon the company of showing that the loss did not occur because of a failure on the part of its employes to discharge this duty.

(2) That though it would ordinarily be a good defence that the loss of the property was occasioned by the negligence of the passenger, yet, if it appears that the acts of the latter alleged to be negligent were caused by the wrongful conduct of the company itself, the latter is estopped to claim immunity because of such acts.

(3) That proper diligence on the part of a sleeping-car

company towards one of its patrons involves the exercise of ordinary care in looking out for and taking care of such property as may be accidentally left by him in a car of the company when leaving it, and the restitution of the property to the owner, when ascertained; and if such property is actually found by the servants of the company, or is left or dropped in such a place and under such circumstances as that, by the exercise of ordinary care, it ought to have been found by them, the company will be liable for its value: *Kates* v. *Pullman Palace Car Co.*, 23 S. E. Rep. 186.

Constitutional Law, Pardon on Condition

According to the Supreme Court of Arkansas, the statute of that state, (S. & H. Dig. Ark., § 2412,) which authorizes the governor to grant pardons on condition that persons pardoned shall leave the state and not return to it, is not in conflict with the Constitution, Art. 2, § 21, providing that no person shall be exiled from the state: *Ex parte Hawkins*, 33 S. W. Rep. 106.

Court, Jurisdiction Circuit Court of Appeals

According to a recent decision of the Supreme Court of the United States, under the Act of 1891, March 3, (26 Stat. at Large, § 27, c. 517,) which, in § 5, authorizes appeals or writs of error from the district or circuit courts directly to the Supreme Court in cases of conviction of an infamous crime, though, by section 6, it gives the circuit court of appeals power to review decisions in the circuit or district courts in cases not provided for by the preceding section, and in terms makes its judgment final in criminal cases, the decisions of the circuit court of appeals are not final in cases of infamous crimes: *Folsom* v. *United States*, 16 Sup. Ct. Rep. 222.

Criminal Law, Due Process of Law, Twice in Jeopardy, Second Conviction

The Supreme Court of the United States has finally settled the question, on which the State courts have been unanimous, [See 2 AM. L. REG. & REV. (N. S.) 718,] that a statute which provides that a person who has been before convicted of crime shall suffer a severer punishment for a subsequent offense than for a first offense is not invalid, as causing him to be

twice put in jeopardy for the same offense, nor as providing a cruel and unusual punishment, in violation of the Fourteenth Amendment to the Constitution of the United States: *Moore* v. *State of Missouri*, 16 Sup. Ct. Rep. 179, affirming 121 Mo. 514; S. C., 26 S. W. Rep. 345.

Courts, Jurisdiction

It also held, in the same case, that it belongs to the state courts to determine whether an indictment in such a court for a major offense is sufficient to support a conviction of a minor offense.

Jurisdiction over Convicts

When a county court delivers persons convicted by it of murder to a jailer for safe-keeping till brought back for execution, the governor has no authority to countermand a subsequent order of that court requiring the jailer to deliver them up, nor will the fact that a writ of error and supersedeas had been awarded each of the prisoners by the Supreme Court justify the jailer in refusing to deliver up the prisoners on the order of the court that committed them; but the fact that a court having jurisdiction has granted the prisoners a writ of habeas corpus will justify such a refusal: *Cardoza* v. *Epps*, (Supreme Court of Appeals of Virginia,) 23 S. E. Rep. 296.

Excessive Sentence, Effect on Validity of Conviction

In *In re Paschal*, 42 Pac. Rep. 373, the Supreme Court of Kansas has lately decided a rather infrequent question of criminal law, as to the effect of an irregular sentence on a regular conviction. It holds that when a prisoner has been arraigned before a court of competent jurisdiction on a criminal charge, and pleads guilty thereto, and the court thereupon imposes a sentence of confinement in the penitentiary for a period longer than that authorized by law, the judgment and sentence are not void *in toto*, if the court had authority to impose the punishment actually adjudged against the prisoner on a conviction of a higher grade of the offense; and the prisoner will not be discharged on habeas corpus before the expiration of the minimum period of punishment fixed by the statute for the offense actually charged, which the court was required to impose in the case.

The court declined, on the ground that it was unnecessary

to the decision of the case, to pass upon the question whether the prisoner could be discharged on habeas corpus after he had served out so much of the sentence as the law required or permitted the court to impose, or not.

Burglary, Possession of Burglars' Tools

The Laws of Wisconsin for 1893, c. 63, make the possession of burglars' tools, adapted to break open places of deposit in order to take therefrom any money or property, with intent to use them for such purpose, a criminal offence. This statute has been recently under discussion by the Supreme Court of that state, in *Scott* v. *State*, 65 N. W. Rep. 61, which decided: (1) That an information alleging possession with the intent to break open places of deposit in general, and take property therefrom, without specifying any particular place or property, is sufficient under the statute.

(2) That when, on a prosecution for having possession of burglars' tools, with intent to use them, evidence is adduced by the prosecution that, on the arrest of the defendant while stealing a ride on an express train, the tools were found concealed in his pants and shoes, and that the tools found formed a complete burglar's kit, except the brace, which is always obtained at the place of operation; and the defendant testifies that he found the tools, it is proper to refuse to take the case from the jury.

(3) That when, on such a prosecution, the only evidence is that the defendant, when arrested, had concealed on his person all the tools usually carried by burglars, and there is no evidence that he has ever been convicted of theft, an assertion in argument by the prosecuting attorney that the defendant is a thief, and a ruling by the court that that assertion is warranted by the evidence, is ground for reversal.

Criminal Procedure, Power of District Attorney to enter a Nolle Prosequi

The Supreme Court of the State of Louisiana in *State* v. *Moise* (not yet reported), has recently handed down an important opinion in regard to procedure and practice in criminal prosecutions, defining the functions and authority of the district attorney, and his right to enter a *nolle prosequi* after the conviction of the accused. The case was an application for

a writ of mandamus, founded upon the following state of facts: The defendant in a criminal prosecution for perjury had been found guilty by the jury, and a motion for a new trial had been overruled by the respondent, who was the presiding judge. Subsequently, but before sentence had been imposed, the district attorney (the relator) tendered in open court a formal motion to *nolle prosequi* the case, and "declared that he would no further prosecute the said cause;" the object of this action apparently being to have the defendant discharged from custody so that he might testify in certain other prosecutions without his testimony being discredited by his conviction. The respondent refused to order the filing of the said motion, or the making the same a part of the record; whereupon the application to the Supreme Court for a writ of mandamus was made.

The contention of the relator was that, inasmuch as the legislature had not expressly restricted the exercise of the power by the prosecuting officer to enter a *nolle prosequi*, or placed the same under the control of the court, his authority in that respect must depend upon the common law, and could be exercised independently of the court. But Mr. Justice WATKINS, in delivering the opinion of the court, decided: (1) That sentence by the court is not essential to the completion of a "conviction," and therefore is not a necessary precedent to the exercise of pardoning power; and (2) that as the pardoning power is thus available, the district attorney cannot give relief of his own motion.

The court observed that criminal prosecutions in that state are quite different from those in England, and also that the power of the prosecuting officer is there greatly diminished; and concluded that "there are three stages of a criminal prosecution, viz.:

"First. The inauguration or preliminary stage, when the prosecuting officer has absolute control of his indictments.

"Second. The trial of the cause, and its incidents, during which the court has control and the power of the prosecuting officer is suspended.

"Third. The period between the verdict of the jury and the

sentence of the court, when the pardoning power comes into operation."

The application was accordingly denied. It is to be regretted that space will not admit of a more extended reference to the learned and exhaustive opinion of the court upon the important questions of law involved.

Deed, Escrow, Delivery to Grantee

The Supreme Court of California has recently held, following *Berry* v. *Young*, 98 Cal. 446; S. C. 33 Pac. Rep. 338, that if a deed made to a child of the grantor is delivered to him in escrow, with instructions to hold the same without reading it until the death of the grantor, who thereby parted with all control over it, it is valid, and operates to vest the title in the grantee immediately, subject to the life estate of the grantor: *Wittenbrock* v. *Cass*, 42 Pac. Rep. 300.

There is an annotation on this subject in 1 AM. L. REG. & REV. (N. S.) 141.

Elections, Ballots, Preparation, Printing Name of Candidate Twice

The Supreme Court of Wyoming has lately held that the name of a candidate, though nominated by more than one party, should be only placed once upon the ballot as a candidate for the same office, but that as the candidates are given an opportunity to inspect the ballots before they are sent out, and to apply to the courts to correct any errors therein, the printing of the name of a candidate twice, if not objected to by the opposing candidates, must be held to have been waived by them. It further held that if it shall be shown that any voter indicated by two crosses on the same ballot an intention to vote for a candidate, placing a cross after her name in each place where it appeared on the ballot, it should only be counted as one vote: *Sawin* v. *Pease*, 42 Pac. Rep. 750.

Ballots, Marking

In *McKittrick* v. *Pardee*, 65 N. W. Rep. 23, the Supreme Court of South Dakota has passed upon a number of questions as to the validity of ballots under the Ballot Law of that State, and has held (1) That when the voter makes a mark or cross in the circle at the head of a party ticket, and erases no name thereon, the vote must be

counted for the whole ticket, though names on other tickets are properly marked with a cross at the left; (2) That a cross at the head of a party ticket, but not within the circle "printed for that purpose," is a mere nullity, and the vote cannot be counted for any candidate upon that ticket whose name is not otherwise marked as prescribed by law; (3) That crosses at the head of two or more party tickets simply neutralize each other; (4) That if an elector erases the names of all the candidates on all the party tickets, except one, he does not thereby vote the ticket on which the names are not erased, unless he makes a cross in the circle at the head of that party ticket, or properly marks the names of the candidates on that ticket for whom he desires to vote; (5) That if there is no cross made at the head of any party ticket, no erasures are necessary, but the elector may designate the candidates for whom he desires to vote by simply making a cross opposite each name; (6) That an elector cannot vote for a candidate whose name is printed on the ballot, by writing his name upon another party ticket; and (7) That a cross to the right of a candidate's name, when the law requires it to be made at the left, is a nullity, and should be disregarded.

Under the Ballot Law of Colorado, which provides that when one desires to vote for all the nominees of a particular party, he may do so by placing a cross opposite the emblem of the party, but when he desires to vote a mixed ticket he shall place a cross opposite the names of the candidates for whom he elects to vote, if a cross has been put opposite the emblem of a party, and one opposite the name of each of the candidates of that party, with certain exceptions, the ticket should not be counted for those candidates of that party opposite whose names crosses are not put.

Since this statute merely provides that the voter shall place a cross opposite the name of each candidate of his choice, it makes no difference whether it is placed to the right or to the left of the names; and though the statute declares that a vote for all the candidates of a party may be cast by placing a cross opposite the emblem of that party, in the appropriate space, it is immaterial that the cross is slightly outside and to

the right of the space prepared therefor: *Young* v. *Simpson*, (Supreme Court of Colorado,) 42 Pac. Rep. 666.

This last ruling is hardly in agreement with the weight of authority, which seems to consider the intent of the voter of but little importance, while this decision rests expressly on the ground that that intent is of paramount importance. See 1 AM. L. REG. & REV. (N. S.) 748; 2 AM. L. REG. & REV. (N. S.) 85, 155, 222, 491, 556, 638, 719, 780.

Under the Illinois Statute, which requires voters to mark a cross in the square opposite the name of the candidates of their choice, it has recently been decided by the Supreme Court of that state, that a ballot in which two lines that do not cross are marked in the square, should not be counted; and also that neither a ballot in which a cross is marked outside of the square and between the names of two candidates for the same office, nor one that merely shows pencil erasures of all the names on one ticket, is valid: *Apple* v. *Barcroft*, 41 N. E. Rep. 1116.

Execution, Service of Writ, Breaking Door

The Court of Appeal of England has lately held that the sheriff may, for the purpose of executing a writ of *fieri facias*, break open the outer door of a workshop or other building of the judgment debtor, not being his dwelling-house or connected therewith: *Hodder* v. *Williams*, [1895] 2 Q. B. 663.

Injunction, Erecting Statue of Deceased Person, Rights of Relatives

The Court of Appeal of New York, in *Schuyler* v. *Curtis*, 42 N. E. Rep. 22, has had one of those rare opportunities under present circumstances, a case of general first impression, and it is to be regretted that it failed signally to rise to the occasion. One of the innumerable associations which form an outlet for the pent-up folly of the mass of humanity conceived the idea that it would be an admirable thing for the world in general, and incidentally as an exploitation of themselves, to procure two statues of female subjects, typifying "woman as the philanthropist," and "woman as the reformer," to be exhibited at the Chicago Exposition of 1893. As the

subject of the first of these the association selected Mrs. G. L. Schuyler, then deceased, and as the second Miss Susan B. Anthony. Mrs. Schuyler's relatives very properly objected, both to the making of the statue and the company in which Mrs. Schuyler's image was to find itself, and, having vainly requested the association to desist, brought action for an injunction to restrain the erection of the statue. This was granted by the Supreme Court; but that decision was reversed by the Court of Appeals, on the ground that the relatives of the deceased had no rights in the premises which were infringed by the erection of the statue, the right of privacy, which was most strongly urged, being personal to the deceased, and having died with her, and the claim as to mental distress caused to her relatives being, in the opinion of the court, a chimera. The court thus proves these points. "Whatever right of privacy Mrs. Schuyler had died with her. Death deprives us all of right in the legal sense of that term, and, when Mrs. Schuyler died, her own individual right of privacy, whatever it may have been, expired at the same time. The right which survived (however extensive or limited) was a right pertaining to the living only. It is the right of privacy of the living which it is sought to enforce here. A woman like Mrs. Schuyler may very well in her lifetime have been most strongly adverse to any public notice, even if it were of a most flattering nature, regarding her own works or position. She may have been (and the evidence tends most strongly to show that she was) of so modest and retiring a nature than any publicity, during her life, would have been to her most extremely disagreeable and obnoxious. All these feelings died with her. It is wholly incredible that any individual could dwell with feelings of distress or anguish upon the thought that, after his death, those whose welfare he had toiled for in life would inaugurate a project to erect a statue in token of their appreciation of his efforts and in honor of his memory. This applies as well to the most refined and retiring woman as to a public man. It is, therefore, impossible to credit the existence of any real mental injury or distress to a surviving relative grounded upon the idea that the action proposed in

honor of his ancestor would have been disagreeable to that ancestor during his life. . . .

"In this class of cases there must, in addition, be some reasonable and plausible ground for the existence of this mental distress and injury. It must not be the creation of mere caprice nor of pure fancy, nor the result of a super-sensitive and morbid mental organization, dwelling with undue emphasis upon the exclusive and sacred character of this right of privacy. Such a class of mind might regard the right as interfered with and violated by the least reference, even of a complimentary nature, to some illustrious ancestor, without first seeking for and obtaining the consent of his descendants. Feelings that are thus easily and unnaturally injured and distressed under such circumstances are much too sensitive to be recognized by any purely earthly tribunal."

In marked contrast to this is the language of the dissenting opinion of Justice GRAY: "She never was a public character, and in no just sense can it be said that, because of what she chose to do in the private walks of life, she dedicated her memory to the state or nation as public property. To hold that, by reason of her constant and avowed interest in philanthropical works unconnected with public station, the right accrued to an association of individuals, strangers to her blood, to erect a statue of her, typifying a human virtue, through contributions solicited from the general public, is, in my judgment, to assert a proposition at war with the moral sense, and I believe it to be in violation of the sacred right of privacy, whose mantle should cover not only the person of the individual, but every personal interest which he possesses and is entitled to regard as private, when through no act of his, nor by any peculiar circumstances, has the public acquired any right in them. Unless equity does interfere, the right of privacy will be lost, and that will become the property of the public which, our sentiments and reason and our sense of justice tells us, is the private property of the relatives of the deceased person. . . . It is not necessary that the proposed statue of Mrs. Schuyler should be libelous in its nature. The wrong consists, not in that fact, but in the unauthorized acts of the

defendants, which will invite adverse comment and public criticism upon the life and character of the deceased, bring her name and memory into more or less unenviable notoriety, and inflict upon her immediate relatives and representatives more or less injury in their feelings and their desires for that privacy which, in their private station of life, they have the right to enjoy."

Justice GRAY'S opinion is founded on the better reason. The result of the majority view is that the feelings of the court are made the criterion of the right of the relatives to enjoin such a statue, not their own. But this is a thing that the court has no right to do. Further, even granting that the court would, as it admits, enjoin the erection of a libelous statue, what security is there that the judgment of the court would be sufficiently reliable to prevent scandal and obloquy being cast on the dead. We are left to a beautiful uncertainty. As a writer in the New York *Evening Post* says :

"The inconveniences which may arise under the decisions are, that any man's enemies or blackmailers may annoy any family with perfect impunity, or extort money from them by proposing to build, and by collecting money for a monument calculated to make a deceased person's memory odious or ridiculous, or to drag it into a kind of publicity which he when living would have loathed. The decision, in fact, is in entire harmony with the state of public feeling which has given us a sensational and scandalous press, by treating the individual's dislike of notoriety as of no consequence, so long as it amuses or entertains the majority. In truth, we do not see that it would not authorize a monument to a living man in spite of his protest or prohibition, and make his opposition to it 'fanciful,' although it brought into prominence a defect, or an eccentricity, or a deplored and recanted opinion."

A private character may enjoin the publication of his portrait; but a public character cannot, in the absence of breach of contract or violation of confidence in securing the photograph from which the publication is made: *Corliss* v. *E. W. Walker Co.*, 64 Fed. Rep. 280, reversing 57 Fed. Rep. 434. An actor, curiously enough, has been held to be a private

individual within this rule. In *Marks* v. *Jaffa*, 26 N. Y. Suppl. 908; S. C., 6 Misc. Rep. 290, the plaintiff, an actor by profession, who was then engaged in the study of the law, declined to give his consent to the publication of his portrait, with that of another well known actor, in the defendant's newspaper, with an invitation to the readers thereof to vote as to which was the more popular; in spite of which the defendant published the pictures and invited the contest; and it was held that the plaintiff was entitled to an injunction to restrain the continuance of such publication.

There is an annotation on this subject in 2 AM. L. REG. & REV. (N. S.) 134.

According to a recent decision of the Supreme Court of Missouri, Division No. 1, an injunction will lie, at least in those states where legal and equitable remedies are administered by the same tribunal, to restrain the enforcement of a municipal ordinance making it a misdemeanor to buy or sell certain articles except in the manner therein described, if the ordinance in question is invalid, though its invalidity has not been determined in a prosecution or an action of a legal nature: *Sylvester Coal Co.* v. *City of St. Louis*, 32 S. W. Rep. 649.

Invalid Ordinance

In *Hilton* v. *Guyot*, 16 Sup. Ct. Rep. 139, the Supreme Court of the United States has decided, against a very strong dissent, several most important questions relating to the force and effect of foreign judgments, not theretofore adjudicated by that court:

International Law, Foreign Judgments, Conclusiveness, Comity

(1) That "where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this

nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact."

(2) That "when an action is brought in a court of this country, by a citizen of a foreign country, against one of our own citizens, to recover a sum of money adjudged by a court of that country to be due from the defendant to the plaintiff, and the foreign judgment appears to have been rendered by a competent court, having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceedings are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is *prima facie* evidence, at least, of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, or by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect."

(3) That "judgments rendered in France or any other foreign country, by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are *prima facie* evidence only of the justice of the plaintiff's claim."

(4) That applying these rules, the judgment sued on in this case, (recovered in France,) was not conclusive, but reviewable on its merits, because such is the practice of the French courts with regard to American judgments.

Chief Justice FULLER dissented from this result, on the ground that the question was not one of comity at all, but merely rested on the broad principle of public policy, applicable alike to foreign and domestic judgments, that their should be an end of litigation. With him concurred Justices HARLAN, BREWER and JACKSON.

In *Ritchie* v. *McMullen*, 16 Sup. Ct. Rep. 171, the same

court applied these rules to a judgment recovered in a Canadian court, and held that according to them it must be regarded as conclusive, because the pleadings showed a submission to the jurisdiction of a competent court, and the averments that the judgment sued on was "irregular and void," and that there was "no jurisdiction or authority on the part of the court to enter such a judgment upon the facts and the pleadings," were mere general averments of legal conclusions, and so insufficient to impeach the judgment.

Intoxicating Liquors, Social Club

The Supreme Court of Texas, in *State* v. *Austin Club*, 33 S. W. Rep. 113, has reached the just conclusion, (which may be commended to several courts for careful examination,) that a club organized, in good faith, for the promotion of social intercourse and the encouragement of literature and art, in selling intoxicating liquors, in a private manner, to its members and non-resident guests alone, but with no view to profit, is not liable to a tax imposed by statute on persons engaged in the occupation of selling liquors. There is a full annotation on this subject, in 31 AM. L. REG. & REV. 861.

Landlord and Tenant, Sub-lease, Duration of Covenant for Quiet Enjoyment

The Court of Appeal of England has recently decided a question of great interest to sub-tenants. The defendants in that case, being possessed of a term of years in a house, of which there were then eight and a half years unexpired, sub-let the premises by indenture to the plaintiffs for a term of ten and a half years, acting under a mistake, but in good faith. The sub-lease did not contain any express covenant either for title or for quiet enjoyment, nor did the words of letting include the word "demise." The plaintiffs occupied the premises until the end of the eight and a half years, when they were evicted by the superior landlord. The plaintiff then brought an action for breach of implied covenants for title and for quiet enjoyment. But the court held, affirming the decision of the Chief Justice, [1895] 1 Q. B. 820, that, even on the assumption that in the absence of the word "demise" either of such covenants could be implied in the lease, the duration

of the covenant was limited by that of the lessor's own estate, and that consequently the plaintiffs could not recover: *Baynes & Co.* v. *Lloyd & Sons*, [1895] 2 Q. B. 610.

Larceny, Misappropriation of Property Innocently Acquired

In *The Queen* v. *Hehir*, [1895] 2 Ir. R. 709, the court for Crown Cases Reserved of Ireland has decided, against a strong dissent, that when the prosecutor, who owed the prisoner a sum of money for work done in his employment, handed him some silver and two notes, supposing them to be £1 notes, one being really a £10 note, the prisoner, having come into possession of it innocently, was not guilty of larceny for having appropriated the £10 note to his own use, after he discovered its true value.

Libel, Privilege

According to a recent decision of the Court of Appeals of New York, the fact that a person is a candidate for election will not render privileged a communication charging him with incompetency in his profession: *Mattice* v. *Wilcox*, 42 N. E. Rep. 270.

There is a full annotation on the subject of criticism of public officers and candidates for public office, in 32 Am. L. Reg. 669.

Negligence, Liability for Acts of Another

The Court of Errors and Appeals of New Jersey has lately held that if one physician, being unable to attend to his practice, sends another in his stead, the former is not liable to one who is injured by the unskilfulness of the latter, since the latter, being engaged in a distinct and independent occupation of his own, is not the servant or agent of the former: *Myers* v. *Holborn*, 33 Atl. Rep. 388.

Offices, Incompatibility, Disqualification of Officer

In *State* v. *Sutton*, 65 N. W. Rep. 262, the Supreme Court of Minnesota has recently given a very valuable decision on the question of the extent of the disqualification of an officer to hold an office declared incompatible with the one he holds by prior title. Art. 4, § 9, of the constitution of that state provides, that "no senator or representative shall, during the time for which he is

elected, hold any office under the authority of the United States or the state of Minnesota, except that of postmaster." The respondent was elected to serve as representative for the term beginning on the first Monday of January, 1895, and ending on the first Monday of January, 1897. He accordingly qualified and served during the session of 1895, and resigned May 2, 1895, the session of the legislature having terminated prior to that date. On May 4, 1895, he was appointed boiler inspector; and on *quo warranto* brought to try his title to that office, the court held that under the constitutional provision, his disability to holding office other than that of member of the legislature did not cease until the expiration of the full term for which he had been elected, and was consequently not removed by his resignation; and that therefore he was disqualified to hold the office to which he had been appointed.

Parliamentary Law, Quorum

According to a recent decision of the Supreme Court of North Carolina, though the roll call of the house of representatives showed that a quorum assembled for the transaction of business, there is no presumption that a quorum was present, if the roll call on the election of an officer disclose that less than a quorum voted: *State* v. *Ellington*, 23 S. E. Rep. 250.

Railroads, Right of Way, Abandonment

The Supreme Court of Minnesota has recently rendered a decision of great importance to the railroad interests of the country, holding that the erection and operation of a public elevator and warehouse upon land acquired by a railroad company by condemnation, for public purposes, either by itself or by its lessee, constitutes neither a misuser nor an abandonment of its easement in the land occupied by that structure, and the owner in fee cannot maintain ejectment for the land so occupied: *Gurney* v. *Minneapolis Union Elevator Co.*, 65 N. W. Rep. 136.

This ruling is more than doubtful. However necessary and important the erection of such buildings may be to the successful *financial* operation of the road, they are not essential to the easement of passage, which is all that a railroad company

acquires in the land condemned by it. And even if they may be erected, as in that state they are allowed to be by statute, on the right of way of the railroad, without its consent, it does not follow that they may be thus erected without the consent of the owner of the fee. That would be a taking of property without due process of law, for there can be no question that such an erection imposes an additional servitude on the fee. That, as the court says apropos of one of its own conclusions, "is a fact so obvious that it may be safely assumed without argument." The legislature, therefore, could not, by merely authorizing the construction of such buildings without the consent of the railroad, by implication authorize their erection without the consent of the owner of the fee; and it could not authorize the latter by express terms, for the structures in question and the corporations erecting them are not within any of the recognized rules in regard to the acquisition of land under the right of eminent domain. On every view of the case, then, this decision is unwarranted.

Statutes, Passage, Amendment

In *State* v. *Corbett*, 32 S. W. Rep. 686, the Supreme Court of Arkansas has laid down some useful principles of constitutional law and statutory construction, holding, in the first place, that under a constitutional provision that the final vote on the passage of a bill shall be a recorded yea and nay vote, a statute is not invalid because the house, in passing the original act, after amending the senate bill, and passing it, as amended, by a yea and nay vote, which was recorded, receded from that amendment, by adopting a conference report, recommending such recession, without taking the vote thereon by yeas and nays; and in the second place, that when the title of an act states its purpose to be to prevent a certain class of acts, and the first section declares such acts to be criminal offenses, and a second prescribes the degree of the offense and its punishment, the fact that the latter section is invalid will not render an act amending the prior act invalid, though it expressly purports to amend the void section, instead of the whole act; for "if the title had been to amend the act of 1891, instead of the second section,

there would have been no objection to the act as amended . . . . . and when the legislature has power to enact a law, and its intention is manifest, effect will be given to the intention, rather than to a mere failure of its language to express or describe what was intended."

As regards the first point, if a statute, having been regularly passed in the house of its origin by a call for the yeas and nays, is sent to the other house, and passed by it in like manner, but in an amended form, and then returned to the house whence it originated, it may be made a valid law, by a simple concurrence of that house in the amendments, or upon refusal of the latter to concur in the amendments, and the appointment and report of a conference committee, it may be validly passed by adopting that report by a simple vote of the constitutional majority, without a call for the yeas and nays, and the bill will be as valid as if passed again in that manner. *McCulloch* v. *State*, 11 Ind. 424; *Hull* v. *Miller*, 4 Neb. 503; *Peo.* v. *Supervisors of Chenango*, 8 N. Y. 317; *Nelson* v. *Haywood Co.*, 91 Tenn. 596; S. C., 20 S. W. Rep. 1. In Kentucky a yea and nay vote is required: *Norman* v. *Ky. Board of Managers of World's Columbian Exp.*, 93 Ky. 537; S. C., 20 S. W. Rep. 901. If, however, the journals disclose the fact that the constitutional majority failed to vote for concurrence in the amendments, or the adoption of the conference report, the bill is invalid: *Peo.* v. *DeWolf*, 62 Ill. 253. Of course, if the vote on concurrence or adoption is taken by yeas and nays, there can be no doubt cast in the propriety of the procedure: *Robertson* v. *Peo.*, (Colo.) 38 Pac. Rep. 326; *In re Division of Howard Co.*, 15 Kans. 194.

If, after a recession from an amendment, or concurrence in a report recommending such recession, the amendment is accidentally copied into the enrolled bill, which is signed in that shape by the presiding officers of the two houses and by the governor, the bill is wholly invalid: *Jones* v. *Hutchinson*, 43 Ala. 721; *Smithee* v. *Campbell*, 41 Ark. 471.

So far as the second point is concerned, it would have been far better to have based this decision on the principle that since the whole statute, after the amendment, has the same

effect as if re-enacted with the amendment, an unconstitutional statute may be amended into a constitutional one, so far as its future operation is concerned, by removing its objectionable provisions, or supplying others, so as to make it conform to the requirements of the constitution: *Walsh* v. *State*, (Ind.) 41 N. E. Rep. 65; *State* v. *City of Cincinnati*, (Ohio,) 40 N. E. Rep. 508, affirming 8 Ohio Cir. Ct. 523.

Strikes, Injunction

The Supreme Court of Missouri, Division No. 1, has recently decided, in accord with the consensus of authority, that a court of equity may interfere by injunction to prevent persons from attempting by intimidation, threats of personal violence, and other unlawful means, to force employes to quit work and join in a strike; for while equity will never interfere by injunction to prevent the commission of a crime, it may enjoin an act which threatens irreparable injury to the property of an individual, though that act may also be a violation of a criminal law: *Hamilton-Brown Shoe Co.* v. *Saxey*, 32 S. W. Rep. 1106.

The court adopts *in extenso* the language of the judge who delivered the opinion in the court below, a part of which one may be pardoned for quoting, because of the terse and forcible manner in which he refutes the hair-splitting of some estimable gentlemen who have endeavored, in the pages of this magazine, to prove that equity cannot remedy such acts, because its action in the premises involves a denial of the right of trial by jury. "It will be observed that the defendants do not claim to have the right to do what the injunction forbids them doing. Their learned counsel even quotes the statute to show that it is a crime to do so. But he contends that the Constitution of the United States and the constitution of the state of Missouri guarantee them the right to commit crime, with only this limitation, to wit, that they shall answer for the crime, when committed, in a criminal court, before a jury, and that to restrain them from committing crime is to rob them of their constitutional right of trial by jury. If that position be correct, then there can be no valid statute to prevent crime. But that position is contrary to all reason. The right of trial by jury

does not arise until the party is accused of having already committed the crime. If you see a man advancing upon another with murderous demeanor and a deadly weapon, and you arrest him,—disarm him,—you have perhaps prevented an act which would have brought about a trial by jury, but can you be said to have deprived him of his constitutional right of trial by jury? [The learned judge might well have added, "Why cannot the law do what an individual may thus do?"] The train of thought put in motion by the argument of the learned counsel for defendants on this point leads only to this end, to wit, that the constitution guarantees to every man the right to commit crime, so that he may enjoy the inestimable right of trial by jury."

It is to be regretted that lack of space forbids quoting the admirable discussion of the question of the power of equity to act in the premises; but the following extract will indicate the trend of that discussion. "What a humiliating thought it would be if these defendants were really attempting to do what the amended petition charges, and what their demurrer confesses,—that is, to destroy the business of these plaintiffs, and to force the eight or nine hundred men, women, boys and girls who are earning their livings in the plaintiff's employ to quit their work against their will,—and yet there is no law in the land to protect them." It would be worse than humiliating; it would utterly destroy all confidence in the boasted efficacy of the law to redress *all* injuries, and form a legal basis for anarchy.

The acts of strikers in interfering with the business of an employer by unlawful means, as by intimidating his workmen, by force, menaces, or threats, to prevent them from working on such terms as they may agree on with their employers, or by boycotting his business, will be enjoined, if the injury threatened is irreparable, though the acts charged may also constitute a crime: *Cœur D'Alene Consolidated & Min. Co.* v. *Miners' Union of Wardner*, 51 Fed. Rep. 260; *Blindell* v. *Hagan*, 54 Fed. Rep. 40; *Barr* v. *Essex Trades Council*, (N. J.) 30 Atl. Rep. 881; *Murdock* v. *Walker*, 152 Pa. 595; S. C., 25 Atl. Rep. 492. If these illegal acts constitute an

interference with the executive powers of the government, it may have an injunction against the offenders: *In re Debs*, 158 U. S. 564; S. C., 15 Sup. Ct. Rep. 900, affirming 64 Fed. Rep. 724. See 1 AM. L. REG. & REV. (N. S.) 609, 879.

But the mere apprehension of some future acts of a wrongful nature which may be injurious to the plaintiff is not a sufficient basis for a final injunction; that remedy becomes a necessity only when it is perfectly clear upon the facts that, unless it is granted, the plaintiff may be irreparably injured, and that he can have no adequate remedy at law for the mischief done. In the absence of proof of such facts, the denial of the relief sought is within the discretion of the court below, with the proper exercise of which an appellate court will not interfere: *Reynolds* v. *Everett*, 144 N. Y. 189; S. C., 39 N. E. Rep. 72. See *Longshore Printing & Pub. Co.* v. *Howell*, (Oreg.) 38 Pac. Rep. 547.

Witness, Competency, Transaction with Decedent, Partition

Under the Revised Statutes of Missouri, § 8918, which enacts that "in actions where one of the original parties to the contract or cause of action in issue and on trial is dead . . . . the other party to such contract or cause of action shall not be admitted to testify, either in his own favor or in favor of any party to the action claiming under him," it has been lately ruled, that though a party to an action by the heirs of a decedent for partition cannot testify that money received by him from deceased was a gift, and not an advancement, he can testify to this effect in the case of money received by another party; for these questions are separate issues, and are independent of the general questions involved: *Gunn* v. *Thruston*, (Supreme Court of Missouri, Division No. 1,) 32 S. W. Rep. 654.